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for Drugs and Drug Addiction

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A cannabis reader: global issues and local experiences

Perspectives on cannabis controversies, treatment and regulation in Europe

8

VOLUME I

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Chapter 7
Cannabis control in Europe

Keywords: cannabis – decriminalisation – drug policy – Europe – legislation – international law – UN convention

Setting the context

The history of cannabis has been the subject of numerous books in recent years (see Fankhauser, this monograph). One of the many historical perspectives that have been explored is cannabis's social, political and legislative history. This chapter provides a brief history of controls on cannabis, and analyses a series of recent government enquiries that have informed legislative reform, particularly in Europe.

Opinions are divided in this area. Liberalisers and cannabis advocacy groups — the key Internet publishers of information on the issue — continue to claim cannabis is a recently controlled substance and 'natural product', and have espoused a number of theories to explain its prohibition ([1]). Yet the historical picture is more complex. Use of cannabis as a psychoactive drug has stirred controversy for centuries. And finding the most appropriate control system has interested professionals, politicians and governments from the beginning.

Today, international drugs conventions recommend signatories to designate, under national legislation, the most stringent control over cannabis. However, some countries have used the granted discretion to move away from such recommendations. A cross-

([1]) Among others, theories include: diplomatic dealmaking (with Turkey and Egypt) during the 1925 amendment to the *International Opium Convention*; timber interests curbing hemp industry growth in the USA (particularly involving a marijuana scare campaign by media, controlled by William Randolph Hurst); synthetic fibre interests curbing hemp industry growth (in particular Du Pont); inter-agency conflict between the FBI and FBN in the USA (with Harry J. Anslinger cast as arch-prohibitionist); cannabis control as a result of institutionalised racism (stigmatising cannabis as a drug of choice of specific racial groups, especially in the USA); and strong international focus on stringency by the United Nations (INCB and UNODC).

reading of governmental enquiries shows that, while cannabis is considered a potentially dangerous substance, its dangers, in comparison with other controlled substances, may have been overstated and alternative forms of sanctions, such as civil sanctions, fines or compulsory health assessments, have been recommended in place of criminal penalties.

European countries' laws or prosecution policies seem to be broadly in accord with these government enquiries. Nonetheless, more liberal positions have attracted some concerns, expressed in particular at UN level, on the grounds that leniency on cannabis can endanger the overall international effort against drugs. Accordingly, the latest developments in some countries seem to tip the balance back towards a new attention on restrictive measures.

Further reading

BBC Timeline (2005), 'The use of cannabis' http://news.bbc.co.uk/2/hi/programmes/panorama/4079668.stm

Böllinger, L., Stöver, H., Fietzek, L. (eds) (2002), *Drogenpraxis, Drogenrecht, Drogenpolitik: Ein Leitfaden für Drogenbenutzer, Eltern, Drogenberater, Ärzte und Juristen*, FHS Frankfurt.

EMCDDA (2001, updated 2006), *ELDD: possession of cannabis for personal use,* available at http://eldd.emcdda.europa.eu/index.cfm?nNodeID=5769

EMCDDA (2005), *Thematic papers — illicit drug use in the EU: legislative approaches* www.emcdda.europa.eu/index.cfm?nnodeid=7082

Hall, W., Pacula, R. (2003), *Cannabis use and dependence: public health and public policy*, Cambridge University Press, Cambridge.

Inglis, B. (1975), *The forbidden game: a social history of drugs*, Hodder and Stoughton, London.

Mills, J. (2003), *Cannabis Britannica: empire, trade and prohibition 1800–1928*, Oxford University Press, Oxford.

Palazzolo, J. (2006), *Le cannabis en question*, Hachette, Paris.

See also the list of governmental reviews (Table 1) in this chapter and the grey literature list in the Appendix to Volume 1 of this monograph (p. 300).

Cannabis control in Europe

Danilo Ballotta, Henri Bergeron and Brendan Hughes

Introduction

The use of cannabis as a psychoactive substance has always been a subject of controversy. International drugs conventions recommend signatories to designate, under national legislation, the most stringent control over cannabis, but some countries have used the granted discretion to move away from such recommendations. Indeed, finding the most appropriate control system has interested professionals, politicians and governments since the beginning. A cross-reading of governmental enquiries shows that, while cannabis is considered a potentially dangerous substance, its dangers in comparison with other controlled substances might have been overstated, and alternative forms of sanctions, such as civil sanctions, fines or compulsory health assessments, have been recommended in place of criminal penalties. European countries' laws or prosecution policies seem to be broadly in accord with such enquiries, but these positions have attracted some concerns, expressed in particular at UN level, on the grounds that such a 'lenient approach to cannabis' can endanger the overall international effort against drugs. Accordingly, the latest developments in some countries seem to tip the balance towards a new attention on cannabis through restrictive measures.

Cannabis: a substance under continuous control

Origins of control

Cannabis has been used for a variety of purposes for thousands of years. Yet in Europe, consumption remained mostly limited to experimentation by small elites or to those having contact with specific countries, in particular North Africa and India (Booth, 2003). There is significant evidence to suggest that cannabis has always been a controversial or troubled substance, and was placed under some sort of restriction almost as soon as its psychoactive effects were discovered.

In 2000 BC in India, religious authorities used cannabis in holy rituals and it is likely that only priests had access to it (Booth, 2003). In the Muslim world in medieval times there existed an ambivalent attitude towards the use of cannabis (Hamarneh, 1957). Hashish, furthermore, had derogatory associations with Sufism and as a precipitator of

madness (Booth, 2003). Key critics of cannabis include the theologian Ibn Taymiyyah, the judge Ibn Ganim and historian Al Magrii. Much-cited examples of controls include the prohibition in 1265 of cannabis in Damascus by King al-Zahir Baybars (Hamarneh, 1957), and the destruction of cannabis plants and prohibition of cannabis use in 1378 by the Ottoman emir of Egypt, Soudoun Sheikouni (Rosenthal, 1971; Caballero and Bisiou, 2000; Arana and Márquez, 2006). In Europe in 1484 Pope Innocent VIII associated the use of hashish with witchcraft in the bull *Summis Desiderantes* (Booth, 2003). Such examples, though anecdotal, illustrate that controversy surrounding cannabis use is not a new phenomenon.

Some precursors of controls relating to cannabis can be found in Europe's colonial period, though outside the continent itself. Following Napoleon's invasion of Egypt in 1798, in 1800 he prohibited his soldiers to smoke or drink the extracts of the plant, imposing a penalty of imprisonment of three months, thus implementing perhaps the first 'penal law' on cannabis. A law in South Africa in the 1870s, that was tightened in 1887, prohibited the use and possession of *dagga* (cannabis) by Indian immigrants, largely in response to a perception that its use by them was dangerous for white rule (Booth, 2003). In India, prohibition of cannabis was mooted in 1838, 1871, 1877 and, most famously, rejected following an extensive 3000-page report by the *Indian Hemp Drugs Commission* in 1894. Nonetheless, despite rejections of a blanket ban, various Indian cities and states issued quotas, tax regimes or restrictions on cannabis (Booth, 2003).

While familiarity with cannabis products in the pharmaceutical sphere was widespread in the early 20th century (Lewin, 1924; Fankhauser, this monograph), within Western Europe there is little evidence of significant cannabis prevalence and criminal prosecutions until after the Second World War. Cannabis control is best viewed in the context of national and international initiatives in the area of drug control during the late 19th and early 20th centuries — in particular, relating to opiates, together with increased supervision of pharmaceutical products in general. Controls in Europe focused on regulating pharmaceutical use of cannabis. For example, in Germany, the first legal act on cannabis was in a Pharmacy Ordinance of 1872 when the sale of Indian hemp was limited to pharmacies (this ordinance was still valid in 1920) (see Fankhauser, this monograph).

However, in Greece and near-neighbour countries such as Turkey and Egypt, cannabis prevalence was higher and attracted strong legal responses. Hashish possession was made a capital offence in Egypt in 1868, with a tax on cannabis imposed in 1874, although exemptions for non-Egyptians and enforcement issues led to them being ineffectual (Booth, 2003). In Turkey a nationwide campaign to confiscate and destroy cannabis was begun by the Sultan in 1877, and an import ban imposed in 1879; in 1884 cultivation of cannabis became a criminal offence (Abel, 1980). In Greece

cultivation, importation, and usage of cannabis was banned in 1890, based on concern for hashish use among the poor. Nonetheless, Greece was a significant exporter of hashish to Turkey and Egypt into the 1920s (Abel, 1980).

Prior to the First World War, international agreements on narcotic substances increased the mechanisms of control on opium and related substances. For opiates, the Opium Commission in Shanghai in 1909 contributed to a framework agreement on opium control at the First International Opium Conference in the Hague in 1911–1912. While the Hague conference concentrated on opium, at this conference Italy lobbied for an international ban on cannabis, largely based on hashishism in its protectorates Tripolitania and Cyrenaica (obtained from Turkey during a war in 1911). In the USA, a number of states also prohibited non-medical use of cannabis: California (1915), Texas (1919) and Louisiana (1924). A parallel development was legal restriction on alcohol use: a ban in Finland (1919) and the USA (1920), and a rationing system in Sweden (from 1914). In Switzerland cannabis was outlawed in 1924.

The key driver of international cannabis prohibition in the early 20th century was an amendment to the International Opium Convention (1925), which was extended beyond opiates to embrace cannabis. The convention prohibited the export of cannabis resin to countries that prohibited its use (Bayer and Ghodse, 1999). The process behind the inclusion of cannabis in the convention has been both heavily discussed (e.g. Lowes, 1966) and roundly criticised (e.g. Kendell, 2003; Holzer, 2004). There is consensus that the cannabis subcommittee advising the Second League of Nations Opium Conference succumbed to strong Egyptian demands for a ban on cannabis and that delegates were certainly given little time to conduct due diligence on materials (Booth, 2003; Kendell, 2003; Holzer, 2004).

Following the approval of the 1925 International Opium Convention, European countries gradually outlawed cannabis use and possession (e.g. the UK's *Dangerous Drugs Act*, 1928; Germany's second *Opium Law*, 1929). Nonetheless, the first substantial wave of convictions for cannabis offences did not occur until the 1960s. Official crime reports in the 1960s and 1970s did not differentiate cannabis convictions from those for other illicit drugs, yet studies suggest that there were very few cases other than cannabis. Böllinger suggests that the bulk of the less than thousand 'narcotics cases' (police registrations) before 1960 in Germany related to the 'stem of old morphinists' (Böllinger et al., 2002). In Canada the first known seizure of marijuana did not occur until 1932, but widespread enforcement is reported much later, with a total of 261 convictions for drug offences in 1960 (the majority, however, for heroin offences). In the Netherlands, in the first half of the 20th century, no problems or social controversy are reported on cannabis, but the opium law was revised in 1953 to include cannabis and comply with international treaties. Thus, some authors (e.g. Fischer et al., 1998) have argued that prohibition was introduced mainly in response to international

obligations — in a broader diplomatic context — than to answer to an urgent problem at national level between law and enforcement (or necessity of it), as 'the solution without the problem' ([2]).

International law

The United Nations Single Convention on Narcotic Drugs (1961) elevated the control on narcotic substances and on cannabis to a global level. Under the system introduced in 1961 (mainly imported from previous treaties), cannabis is to be considered as one of the most dangerous existing drugs ([3]).

This section discusses the texts of the UN Convention. While this approach may appear legalistic to the non-specialist reader, a thorough understanding of the legal status of cannabis under international law is vital for understanding the 'room for manoeuvre'([4]) given to different countries on the issue.

Cannabis, cannabis resin and extracts and tincture of cannabis are listed in Schedule I of the 1961 Convention among substances whose properties might give rise to dependence and which present a serious risk of abuse, which are subject to all control measures envisaged by the Convention ([5]). Cannabis and cannabis resin are again listed in Schedule IV of the 1961 Convention, which comprises 15 substances already listed in Schedule I that are considered particularly dangerous by virtue of their harmful characteristics, risks of abuse and extremely limited therapeutic value. Among these 15 substances, we find heroin and cannabis but not cocaine, which is (only) listed in Schedule I.

([2]) Giffen et al. (1991) affirm that 'unlike other narcotic drugs brought under federal control up to the 1920s, marijuana was added to the Schedule I in 1925, before it came to be defined as a social problem in Canada. Why this was so remains a mystery'.

([3]) Article 2.5(a) of the 1961 Convention introduces the concept of dangerousness for substances included in schedule IV.

([4]) 'Room for manoeuvre' was the title of a report commissioned by the British charity Drugscope, with a focus on the UN conventions and potential changes to UK drugs possession laws (Dorn and Jamieson, 2000).

([5]) There are four schedules under the 1961 Single Convention on Narcotic Drugs: Schedule I — those substances which are, inter alia, having, or convertible into substances having a liability to abuse comparable to that of cannabis, cannabis resin or cocaine; Schedule II — having addiction-producing or addiction-sustaining properties not greater than those of codeine but at least as great as those of dextropropoxyphene; Schedule III — preparations which are intended for legitimate medical use, and which the WHO considers not liable to abuse and cannot produce ill effects, and the drug therein is not readily recoverable; and Schedule IV — substances that are particularly liable to abuse and to produce ill effects, and such liability is not offset by substantial therapeutic advantages not possessed by substances other than drugs in Schedule IV.

As specified by the 2001 INCB Annual Report, 'to be included in Schedule IV, a drug has to be considered particularly liable to abuse and to produce ill effects, and such liability should not be offset by substantial therapeutic advantages'. In the view of the delegations present at the Plenipotentiary Conference that prepared the 1961 Convention, cannabis certainly presented such characteristics (though cocaine, for example, did not). THC, the main psychoactive ingredient of cannabis, is also listed by the 1971 Convention on Psychotropic Substances, in the first of four schedules, its use being prohibited except for scientific and very limited medical purposes (Article 7a) ([6]).

This composite classification reflects the concern about the abuse of cannabis and the desire of the convention promoters to advise countries to design, under national legislation, the most stringent control on cannabis ([7]). Indeed, this *double classification* (Schedule I plus Schedule IV, 1961 Convention) allows signatory countries to adopt any special measures of control regarded *as necessary*, including prohibition of use, due to the 'particularly dangerous properties' of the drugs listed in Schedule IV. However, a country shall adopt any special measures of control *if considered necessary* having regarded the particularly dangerous properties of drugs in Schedule IV ([8]). The non-obligation of this norm, in fact a condition for its implementation, is confirmed by the UN Commentary on the 1961 Convention, which restates that a party is 'obliged to apply special measures only if it believes them to be necessary' ([9]).

([6]) There are four schedules under the 1971 UN Convention on Psychotropic Substances: Schedule I — substances whose liability to abuse constitutes an especially serious risk to public health and which have a very limited, if any, therapeutic usefulness; Schedule II — substances whose liability to abuse constitutes a substantial risk to public health and which have little to moderate therapeutic usefulness; Schedule III — substances whose liability to abuse constitutes a substantial risk to public health and which have moderate to great therapeutic usefulness; and Schedule IV — substances whose liability to abuse constitutes a smaller but still significant risk to public health and which have a therapeutic usefulness from little to great.

([7]) The UN documents of the years preceding the signatures of the 1961 and 1971 Conventions confirm a particular concern towards cannabis. In 1959 countries were requested 'to increase their efforts to suppress the illicit cultivation of cannabis' (CND Decision 14 December (XIV) April/May 1959). In 1968 they were recommended to 'increase their efforts to eradicate the abuse of and illicit traffic in cannabis' or to 'promote research and advance additional medical and sociological information regarding cannabis, and effectively deal with publicity which advocates legalisation or tolerance of the non-medical use of cannabis as a harmless drug (Economic and Social Council E/RES/1968/1291(XLIV), 1520th Plenary Meeting, 23 May 1968, on the abuse of cannabis and the continuing need for strict control). An extract from E/RES/1959/730(XXVIII)E 1088th Plenary Meeting, 30 July 1959, reads as follows: 'Recalling that the third draft of the Single Convention on Narcotic Drugs contains an express provision for the prohibition of the medical use of cannabis drugs except in certain systems of indigenous medicine'. An extract from Economic and Social Council Resolution IV(XII) on the question of cannabis, April/May 1957, 'Requests all Governments to abolish, except for medical (Ayurvedic, Unani and Tibbi systems) and scientific purposes, the legal consumption of all substances having a cannabis base within a reasonable period where it has not been done so far'.

([8]) Article 2.5(a), 1961 Convention.

([9]) UN Commentary on the 1961 Single Convention (p. 65).

It seems, therefore, that the 1961 Convention suggests to apply the most stringent control system to cannabis, yet leaves countries some flexibility in their interpretation of the *necessity* of such control. According to this classification, use and possession of cannabis should not be allowed except for authorised medical or scientific purposes (Articles 4c, 33, 36, 1961 Convention). Countries are requested to prevent its misuse (Article 28, 1961 Convention) and take all practicable measures for the prevention of its abuse (article 38, 1961 Convention). They should also not permit its possession (Article 33, 1961 Convention) and if they decide to do so, they are entitled to make possession of cannabis a punishable offence (Article 36, 1961 Convention), and are mandated to make possession for the purpose of trafficking an offence of criminal nature (Article 3, paragraph 1(a)(iii), 1988 Convention). Possession for personal consumption may also be criminalised (Article 3 paragraph 2, 1988 Convention).

This system of provisions leaves no doubt about the severity requested towards cannabis and it is evident that signatory countries cannot allow non-medical use of cannabis, such as in a hypothetical *legalisation regime*, without renouncing the UN Conventions. They must set measures to discourage, prevent or — if considered necessary — prohibit and punish personal use of cannabis ([10]).

All this is, however, largely based on the *acceptance* of the Conventions by the signatory countries. This means that countries must judge the *opportunity* and *necessity* of applying the convention norms. Conventions are, in fact, not *self-executing* and in the transposition of the international dictate into national law, countries are allowed discretion, while applying the principle of good faith in interpreting international agreements. This is visible throughout in the presence of safeguard clauses in the text of the Conventions: *subject to constitutional limitations* (Article 36.1, 1961 Convention); *subject to basic concepts of national legal systems* (Article 3, paragraph 2, 1988 Convention); *the Parties shall as far as possible* (Article 26, paragraph 2, 1961 Convention); *these measures are necessary or desirable* (Article 22 and Article 30, paragraphs 2 and 4, 1961 Convention). Nevertheless, states should interpret treaties in good faith and in the light of their object and purpose, according to Article 31 of the 1969 Vienna Convention on the Law of Treaties.

A constant quest for evidence

By 1970, 64 states had ratified the Single Convention on Narcotic Drugs and with it the control system required for cannabis. Nevertheless, the fact that cannabis was treated no differently, even more strictly, than other substances that were perceived to be more dangerous provoked uncertainty within governments and parliaments.

([10]) An expression that, according to the country considered, might mean use of cannabis or possession of small quantities of cannabis for personal use or both.

There is evidence to suggest that disagreements embraced the question of the international *classification(s)* of cannabis from its beginning. Already, during the Plenipotentiary Conference, which drafted the 1961 Convention, controversies arose around the question of whether the prohibition of drugs in Schedule IV should be mandatory or only recommended. More recently, some authors see the insistence of certain countries to place cannabis under the strictest control regime in the convention as the main reason for such classification (Canadian Senate Report on Cannabis, 2002). Others go so far as to use the words 'arbitrariness' when addressing cannabis classification (Caballero and Bisiou, 2000).

Evidently, the question of the classification of cannabis or of its derivatives is controversial and has arisen from time to time ([11]). In 2003 the WHO Expert Committee on Drug Dependence ([12]), following a *Critical Review* ([13]), recommended the rescheduling of dronabinol (THC, the main active principle of cannabis), to Schedule IV of the 1971 Convention ([14]). This would mean that the active principle of cannabis would be moved from a schedule where substances have very limited, if any, therapeutic usefulness and their abuse constitutes an especially serious risk to public health, to a schedule where substances have some therapeutic usefulness with a smaller (but still significant) risk to public health due to their liability of abuse. If implemented, this would probably have important consequences on the overall classification of cannabis and on its control requirements worldwide, but no further procedural steps have been taken.

([11]) ARF/WHO Scientific Meeting on Adverse Health and Behavioural Consequences of Cannabis Use, WHO and the Addiction Research Foundation of Ontario, 1981; *Cannabis: a health perspective and research agenda*, Division of Mental Health and Prevention of Substance Abuse, World Health Organisation, 1997.

([12]) The WHO Expert Committee has the task of carrying out medical and scientific evaluations of the abuse liability of dependence-producing drugs falling within the terms of the 1961 Single Convention on Narcotic Drugs and the 1971 Convention on Psychotropic Substances. It then makes recommendations to the United Nations Commission on Narcotic Drugs on the control measures, if any, that it considers appropriate. The Expert Committee's reports are published by WHO in the Technical Report Series.

([13]) A Critical Review is an assessment process in which the Expert Committee, on the basis of (1) a notification from a Party to the 1961 or the 1971 Convention concerning the scheduling of a substance; (2) an explicit request from the UN Commission on Narcotic Drugs to review a substance; (3) a pre-review of a substance which has resulted in a recommendation for critical review; (4) information sent to the attention of the WHO that a substance of especially serious risk to public health and society, and of no recognised therapeutic use by any Member State, is clandestinely manufactured, with analysis of the substance according to its similarity to known substances and effects on the central nervous system, dependence potential, actual abuse and/or evidence of likelihood of abuse, therapeutic usefulness, and providing recommendations for scheduling or non-scheduling.

([14]) The WHO Expert Committee report recommend that 'all stereochemical variants of delta-9-tetrahydrocannabinol be moved to Schedule IV of the 1971 Convention', and that this is 'to avoid placing different stereochemical variants of the same substance under different control systems'. We have, in fact, to remind that in 1990 the WHO Expert Committee proposed the rescheduling of dronabinol, a stereochemical variant of delta-9-tetrahydrocannabinol, to Schedule II of the 1971 Convention.

In response to the WHO, the INCB expressed its concern in its 2003 report about this possible rescheduling of THC. In March 2006 the WHO Expert Committee on Drug Dependence concluded that dronabinol (THC) constitutes a substantial risk to public health, but the risk is different from that of cannabis, and it has moderate therapeutic usefulness. As a result, it recommended that dronabinol and its stereoisomers should be rescheduled from Schedule II to Schedule III of the 1971 Convention (WHO, 2006). At the 50th UN Commission on Narcotic Drugs in March 2007, members agreed to postpone any decision on dronabinol until more conclusive evidence is available, although firm opposition to the rescheduling was expressed by some delegates.

At the level of national authorities, evaluations of cannabis have been carried out on a regular cycle. The first 'official' enquiries date back to the late 19th and early 20th centuries, for example the Indian Hemp Drugs Commission in 1894, the *Panama Canal Zone Report* in 1925 and the *La Guardia Report* in 1944. The frequency of publication of such enquiries, however, picked up from 1969 onwards and has led to a proliferation of 'official' enquiries in the 1990s and 2000s. Despite their differences in scope, methods and conclusions, the recommendations of these, and older enquiries, reveal interesting common patterns. Three have been isolated for simplicity: (1) cannabis is not a harmless substance; (2) its dangers, in comparison with other controlled substances, have been overstated; and (3) civil sanctions, fines, or compulsory health assessments should be established in place of criminal penalties for personal use offences (Table 1).

Conclusion of reviews 1: cannabis is not a harmless substance

Cannabis is a substance that poses some kind of threats to health for which certain control would be justified. The UK Wootton Report in 1968 affirms that the '*adverse effects that cannabis consumption, even in small amounts, may produce in some people, should not be dismissed as insignificant*' ([15]). These words were echoed more than 30 years later by the UK *Report of the Advisory Committee on Drug Dependence*, which stated in 2002 that its use '*unquestionably poses risks both to individual health and to society*' (UK Home Office, 2002). This view is also mirrored by other enquiries. For example, the inquiry for the Prime Minister of Jamaica in 2001, affirming that '*it is accepted that cannabis is not entirely safe*, even where it is still used for traditional religious rituals, such as in Jamaica', and that '*despite its proven folk medicinal qualities, its use can be injurious to health*' (National Commission on Ganja, 2001). The general attitude is that cannabis and its derivatives should be maintained as controlled drugs (UK House of Lords, 1998), as governments are responsible for restricting the availability of harmful substances, in particular to prevent the exposure of young people (Canada, 1970; Australia, 1994; New Zealand,1998).

([15]) UK Home Office (1969): cover letter to the Wootton Report sent to the Home Secretary by Chairman Mr Edward Waine, 1 November 1968. See also Abrams, this monograph.

Table 1: Summary of governmental reviews on cannabis control

Title of report	Country	Year
Cannabis: Report by the Advisory Committee on Drugs Dependence ('The Wootton Report')	United Kingdom	1969
Le Dain Report	Canada	1970
Baan and Hulsman Commissions	The Netherlands	1970, 1971
Report of the Expert Group on the Effects of Cannabis Use	United Kingdom, Home Office Advisory Council on the Misuse of Drugs	1982
Legislative options for cannabis use in Australia, Monograph No. 26	Australia	1994
Inquiry into the Mental Health Effects of Cannabis, Report of the Health Committee, AJHR, I.6A	New Zealand	1998
House of Lords Science and Technology Select Committee, Ninth Report, Cannabis: the scientific and medical evidence, HL 151 1997–98	United Kingdom	1998
Swiss Federal Commission for Drug Issues, Cannabis Report	Switzerland	1999
A Report of the National Commission on Ganja to Rt Hon. P. J. Patterson, QC, MP, Prime Minister of Jamaica	Jamaica	2001
The Senate Special Committee on Illegal Drugs, Cannabis: our position for a Canadian public policy	Canada	2002
Report by the Advisory Committee on Drug Dependence, Home Office, The Classification of Cannabis under the Misuse of Drugs Act 1971	United Kingdom	2002
Rapport de la Commission d'enquête du Sénat français sur la politique nationale de lutte contre les drogues illicites, No. 321	France	2003
Report by the Advisory Council on the Misuse of Drugs, Home Office, Further consideration of the classification of cannabis under the Misuse of Drugs Act 1971	United Kingdom	2005

Conclusion of reviews 2: the dangers have been overstated

The identification of cannabis as a potentially dangerous psychoactive substance did not, however, prevent a substantial number of these enquiries to explore the issue of whether current legislation reflected the real dangers posed by cannabis. Already in 1944, the *La Guardia Committee Report on Marihuana* concluded that 'the practice of smoking marihuana does not lead to addiction in the medical sense of the word' and that 'the use of marihuana does not lead to morphine or heroin or cocaine addiction' (Zimmer and Morgan, 1997). In 1968 the Wootton Report stated that 'the dangers of cannabis use as commonly accepted in the past and the risk of progression to opiates have been overstated' and 'cannabis is less harmful than other substances (amphetamines, barbiturates, codeine-like compounds)'. A similar conclusion was

arrived at 34 years later in 2002 when the Advisory Committee on Drug Dependence proposed the reclassification of cannabis from Class B to Class C (enforced by law in 2004 and confirmed in 2005). These views were reiterated by other enquiries, such as the *Baan Committee* in the Netherlands, which affirmed in 1971 that 'cannabis use does not lead directly to other drug use' ([16]) or by the US National Commission on Marihuana and Drug Abuse, which in 1973 stated that 'the existing social and legal policy is out of proportion to the individual and social harm engendered by the use of the drug [cannabis]' ([17]). The Canadian *Le Dain* Commission saw 'the UN Single Convention of 1961 as responsible' for such a situation which 'might have reinforced the erroneous impression that cannabis is to be assimilated to the opiate narcotics'. The same commission, however, suggested that the UN Convention did 'not prevent domestic legislation from correcting this impression' ([18]).

Conclusion of reviews 3: personal use offences do not require criminal sanctions

Endorsing these interpretations, a number of enquiries proposed that criminal sanctions should be withdrawn from private use and/or possession for such use, to create instead a criminal exemption scheme or to impose fines, to decriminalise personal use or just to impose compulsory health assessment. These conclusions were largely based on the belief that criminalising the users of small quantities of cannabis could engender far more harm than good to the society as a whole (e.g. Jamaica, 2001), and that such alternative measures would remove the criminal stigma and the threat of incarceration from a widespread behaviour (possession for personal use) which does not warrant such treatment (US National Commission on Marihuana and Drug Abuse, 1973). The Canadian Senate in 1970 argued that 'the criminal law should not be used for the enforcement of morality without regard to potential for harm'. Three years later, the US National Commission on Marihuana and Drug Abuse stated that 'Relieving the law enforcement community of the responsibility for enforcing a law of questionable utility, and one which they cannot fully enforce, would allow concentration on drug trafficking and crimes against persons and property'. The French Senate in 2003 recommended to impose a fine in case of a first offence of drug use (all drugs), and to create an obligation for health or social measures. In 2002 the UK Advisory Committee on Drug Dependence proposed a reclassification of cannabis in the list of controlled substances. The UK government, which endorsed the recommendations to move cannabis from

([16]) In Cohen, P. (1994), *The case of the two Dutch drug policy commissions. An exercise in harm reduction 1968–1976*. Paper presented at the 5th International Conference on the Reduction of Drug Related Harm, 7–11 March 1994, Addiction Research Foundation, Toronto. Revised in 1996.

([17]) *Marihuana: a signal of misunderstanding. The official report of the National Commission on Marihuana and Drug Abuse*, Raymond P. Shafer, Chairman (1973), 211.

([18]) Le Dain, G. et al., *Cannabis: report of the Commission of inquiry into the non-medical use of drugs*. Ottawa: Government of Canada in Report of the Senate Special Committee on Illegal Drugs, 'Cannabis: our position for a Canadian public policy', September 2002, Volume II, 278.

Class B to Class C, pointed out that reclassification does not mean that cannabis is legalised or decriminalised, and that possession for personal use still carries a maximum sentence of two years in prison. Yet, following reclassification in the UK, it is unlikely that adults caught in possession of cannabis will be arrested, the usual outcome being a warning and confiscation of the drug. Nonetheless, some instances may lead to arrest and possible caution or prosecution, including repeat offending, smoking in a public place, instances where public order is threatened and possession of cannabis in the vicinity of premises used by children.

A few enquiries went even further, recommending the regulation of cannabis consumption and sale. The Senate Special Committee on Illegal Drugs in Canada recommended in 2002 that the government amend the Canadian legislation in order to create a criminal exemption scheme that would allow 'for obtaining licences as well as for producing and selling cannabis'. The Senate also asked, as a consequence of this legislative modification, for an amnesty to be declared for any person convicted of possession of cannabis under current or past legislation ([19]). Illegal trafficking and export would still attract criminal penalties. In Switzerland, in 1999, the Federal Commission for Drug Issues recommended the removal of the prohibition of consumption and possession of cannabis, and the possibility for cannabis to be purchased lawfully. According to the Federal Commission, clear provisions for the protection of the young and the prevention of all the potential adverse consequences of legalisation ought to be included in the new system. The commission suggested that if the government accepted this model, Switzerland should renounce the Single Convention of 1961 given that these provisions were not compatible with international drug control agreements. In Australia, in 1994, the study undertaken by the government, *Legislative options for cannabis use in Australia,* concluded, more ambiguously, however, that 'cannabis law reform is required' and that the reform should be one 'within the broad categories of prohibition with civil penalties, partial prohibition and relatively free but regulated availability'.

The value of these inquiries — while in many cases limited in the strict scientific point of view — lies in their political significance. The overall picture suggests that cannabis consumption potentially poses risks both to individual health and to society, and on this basis some sort of legal control seems justified. At the same time, it is acknowledged that the dangers of cannabis have in some cases been overstated, that there has been a lack of separation between cannabis and other more dangerous substances and that its consumption does not necessarily lead to crime or other drug use. Alternative forms of criminal sanctions, such as civil sanctions, fines or compulsory health assessments, have been suggested. In a few cases, enquiries have included in their suggested options the regulation of cannabis consumption and sale, while drawing attention to the political impracticability of the option.

([19]) Report of the Senate Special Committee on Illegal Drugs, 'Cannabis: our position for a Canadian public policy', September 2002, Volume III, recommendations nos. 6 and 7, p. 618.

European Union countries

Classification of cannabis

As far as the classification of cannabis at national level is concerned, the variety of laws and procedures within the EU reflect both the severe requirements as suggested by the UN Conventions and the 'room for manoeuvre' at Member State level. Legislation may be organised into a 'pyramid': on the bottom tier are those legal systems where cannabis is fundamentally considered as different from other drugs; at the top are those in which cannabis is treated on a par with all other drugs, but where prosecutorial instructions or even judicial discretion in practice apply a distinction between substances, usually based on criteria regarding the nature of the substance. Four general groups of countries can be identified in which cannabis is classified and controlled differently from other drugs, being thus subject to a different prosecutorial approach. These approaches are as follows: *classification by law*; *exemption to the law*; *exception by guidelines*; or *exception due to judicial discretion*.

Firstly, in certain countries, lists established in or directly linked to the laws are used to determine different legal degrees of severity in control and prosecution of offences. Cannabis is included in those lists that do not request the maximum legal response. For example, in Cyprus, the Netherlands and the United Kingdom, the respective laws classify cannabis in lists where the level of severity demanded in response to offences is not as strict as for substances included in other lists. Strikingly, no other substance listed in Schedule IV of the 1961 Convention has received this treatment.

Secondly, the law may consider drugs to be equally classified but provide specific *exemptions* for the prosecution of cannabis offences. In countries such as Ireland, Belgium and Luxembourg, cannabis is either legally classified amongst those substances presenting a serious risk of abuse, no medical value and subject to all control measures, or it is included in the general list of controlled substances which do not distinguish between such substances based on health risks. However, the national laws or penal codes introduce specific distinctions for cannabis possession that can render prosecution or sentencing for cannabis more lenient than for other drugs. In Greece, cannabis is classified on an equal footing to other drugs but production or cultivation of cannabis is legally distinguished from production or cultivation of other drugs for personal use. In Spain, classification of drugs is analogous to the UN Schedules, but there is a distinct lower penalty range for trafficking in drugs that are not considered as 'very dangerous substances', and jurisprudence shows this to be interpreted as cannabis. Less specifically, in Poland, while cannabis is classified in a way similar to the UN Conventions, the laws establish the category of a 'minor' drug possession offence, which may take into account the substance nature when determining if the offence qualifies as 'minor'. In practice, this may be attributed to first time personal use of cannabis.

A third variant is visible in those countries in which cannabis is legally classified in the most stringent lists and the law or penal code does not provide for any exemptions. However, *prosecutorial guidelines* or *judicial precedent* indicate that a distinction should be made based on the *nature* of the substance when prosecuting. In Denmark a State Prosecutor directive and in Germany a Constitutional Court decision request less severe measures for possession of cannabis for personal use.

In a separate group of countries (e.g. Czech Republic, Estonia), cannabis is not classified differently from other drugs and the law does not differentiate among substances, that is, drug offences attract the same penalty regardless of the substances involved. In this group there are no prosecutorial guidelines in favour of a less severe approach to cannabis. Nonetheless, the *nature* of the substance is one of the criteria (together with the quantity, previous criminal records, and other circumstances) considered by prosecutorial or judicial discretion when deciding to reduce the charges or not prosecute an offender. Cannabis may be included in this category as a 'less dangerous' drug.

The evidence available thus implies that, although international policy suggests that cannabis ought to be classified as one of the most dangerous substances to which the most severe controls apply, this is not often transposed as such across the different European national criminal justice systems. Nevertheless, the different interpretations of international conventions can be visible 'de jure' or 'de facto'. They can be managed either by *legal classification*, or by specific mention in the *law or penal code*, or by *prosecutorial guidelines*, or by the *discretionary powers* proper to each judicial system. The choices between 'de jure' or 'de facto' options might reflect different political attitudes towards cannabis.

Personal use of cannabis ([20])

Based on laws passed in parliament, ministerial directives or prosecutorial guidelines, a variegated picture emerges of the overall legal attitude towards personal use of cannabis. Nonetheless, despite the different legal approaches towards cannabis, a common trend can be seen in the development of alternative measures to criminal prosecution for cases of use and possession of small quantities of cannabis for personal use without aggravating circumstances. Fines, cautions, probation, exemption from punishment and counselling are favoured by most European justice systems. The EMCDDA maintains a table enabling comparison of legislation regarding cannabis offences on its website ([21]).

([20]) 'Personal use' here applies to offences for simple use or possession exclusively for personal consumption, and where other finalities are excluded (although legal definitions vary, these usually involve small quantities and absence of aggravating circumstances).

([21]) See eldd.emcdda.europa.eu/index.cfm?nNodeID=5769

In the European countries considered for this chapter, personal use of cannabis attracts administrative sanctions ([22]) or alternatives to custodial sanctions in 16 countries. This suggests that in many European countries considered, *personal use of cannabis* is an offence that attracts sanctions such as fines and deprivation of certain rights, for example suspension of driving licence, or other measures such as cautioning, discontinuance or suspension of proceedings or, if needed, referral to treatment, but does not lead to imprisonment. Indeed, drug policies in many European countries seem to concur that criminal action against non-problematic use/possession of cannabis should receive the lowest prosecutorial priority ([23]).

Cannabis legislation: between global consistency and national leniency

In recent years cannabis or general drugs laws have been substantially modified in a number of European countries. In Portugal, drug use was decriminalised in 2000. In Luxembourg in 2001 penalties for cannabis use and possession passed from imprisonment to fines. In Belgium in 2003, following a similar approach, legislation was introduced that would attract a police registration and fine for the first two cannabis use prosecutions, although police registration was annulled by the ruling of the Belgian Court of Arbitration in 2004. The United Kingdom reclassified cannabis from a Class B to Class C drug in 2004. These are in line with the conclusions of the inquiries described above. The cannabis issue has been strongly debated in recent years in France, Switzerland, Italy and the Netherlands, fuelled by a number of legislative proposals. Some debate has embraced the legal status of cannabis used for therapeutic purposes. For example, in the Netherlands a project to supply cannabis to patients was established from 2003, with an Office of Medicinal Cannabis strongly regulating supply. However, demand has proven lower than expected (1 000–1 500 patients, or around one-tenth of predicted demand), although the policy was renewed for a 5-year period in November 2007.

Modification — or proposed modification of cannabis laws — have often been accompanied by heated debate in the media. The political sensitivity of moving away from strict control has caused governmental apprehension, and concern has also been manifested at the international level. The UN control system has taken a position on cannabis in several instances: the INCB has repeatedly raised objections to the way some EU countries deal with cannabis offences, in particular where personal use is

([22]) 'Administrative sanctions' applies to sanctions not including imprisonment, such as fines or other non-criminal measures.

([23]) EMCDDA (2002) *Prosecution of drug users in Europe*, p. 69, and Rand Europe (2003), *Cannabis policy, implementation and outcome*.

concerned. The Netherlands has often been criticised by the INCB for its 'coffee shop' policy, and also Luxembourg, Portugal and the United Kingdom have been the object of scrutiny for their new laws on cannabis, allegedly because of their non-alignment with international drug control treaties ([24]). This message was again made clear in a chapter on 'the new [high potency] cannabis' in the UNODC's 2006 *World Drugs Report*, which stated that 'It is essential (…) that consensus be regained, and that what is truly a global issue is again approached with consistency on a global level. After all, it is for precisely this that the multilateral drug control system was designed.'

Such calls for awareness on the presumed cannabis leniency and the danger that such a 'soft line' on cannabis could provoke have not fallen on deaf ears. Without suggesting a direct link, some acknowledgement may be detected in the 2004 EU Council Resolution on cannabis, and increased scrutiny of cannabis in some EU countries. In Denmark, where since the 1970s people caught for possession of cannabis (for personal use) were just warned, a new directive of 2004 advises prosecutors that a fine should now be the norm. In the Netherlands, the government adopted an action plan to reduce the use of cannabis. In Italy, a country where since 1993 cannabis was officially considered to be different from other drugs, a 2006 law eliminated this difference on the assumption that all drugs are dangerous. In France, in 2005, a new campaign was launched on the risks of cannabis for young people after the government turned down the possibility of substituting penal sanctions with administrative fines for cannabis consumption, adducing that such a modification could have been interpreted as recognition of the 'weak dangerousness' of cannabis and could lead to an increase in consumption ([25]).

To conclude, there is sufficient evidence to confirm that the legal approach to *personal use* of cannabis is far from homogeneous across the European countries. Nevertheless, avoiding imprisonment seems to be the trend for *personal use* offences, which can be applied more or less openly, through the law or through prosecution powers. However, there are some efforts to limit this trend. A rise in concern is visible at international and national level. An alleged increase of THC content (see King, this monograph) and increased demand for treatment with cannabis being the primary drug have contributed to this concern. The UN system openly condemns 'lenient policies' and recent policy shifts in some Member States suggest a renewed attention towards cannabis. Overall, it is interesting to note that while drug policies which appeared in the 1990s and early 2000s suggested a non-criminal approach to personal use of cannabis, more recent policies seem to tip the balance back towards more restrictive measures.

([24]) See International Narcotics Control Board (INCB) Reports 1999, 2001 and 2002.
([25]) *Plan gouvernemental de lutte contre les drogues illicites, le tabac et l'alcool 2004–2008*. Available at: www.drogues.gouv.fr

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